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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1510th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 July 1996, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1510/Add.1.

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The meeting was called to order at 10.05 a.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5) (continued)

Draft general comment on article 25 (CCPR/C/56/CRP.1) (continued)

Paragraph 24

1. Mr. BRUNI CELLI said that he had difficulty accepting the notion, formulated at the previous meeting by Mr. Klein, that the matter of political parties was incidental to article 25. Paragraph (a) of that article provided that every citizen could take part in the conduct of public affairs through freely chosen representatives, and such representatives were in fact normally elected from party lists. The lists of candidates were drawn up by political parties through their own internal processes. The genuine periodic elections described in paragraph (b) were closely linked to the functioning of political parties, and elections conducted without their participation might be regarded as suspect.

2. Two formulas had been proposed. The first, put forward by Mr. Kretzmer, would rephrase the final sentence of paragraph 24 of the draft to read, "Therefore, where necessary, appropriate steps should be taken by States parties to ensure that political parties respect the principle of article 25 in their internal management". In his view, the phrase "where necessary" should be dropped, because it could encourage States parties to pose the question of whether or not such steps were necessary. The second formula, suggested by Mr. Buergenthal, would divide the final sentence into two parts, putting a full stop after the words "article 25", and then continuing: "In their internal management, political parties should respect the applicable principle of article 25 in order to ensure that all citizens may exercise the right to participate in the conduct of public affairs."

3. Mr. KRETZMER said he agreed that the term "where necessary" was vague. A wording should be employed which would on the one hand satisfy the concern that the methods of certain political parties might be undemocratic, and on the other hand avoid obliging all countries to take steps which could be interpreted as governmental interference in political parties. He therefore proposed that the phrase should be reformulated to read: "Therefore, where necessary to ensure that the exercise of the rights under article 25 be effective ...".

4. Mr. FRANCIS said he was convinced that Mr. Buergenthal's formula, as amended by Mr. Bruni Celli, was the better of the two, since it avoided imposing responsibility on States parties. States parties were implicitly obliged to ensure that their democratic processes were conducted in conformity with article 25, and therefore saying so in the general comment was superfluous.

5. Lord COLVILLE said he was concerned about the reference to participation in the conduct of public affairs in so far as it applied to civil servants. Civil servants should certainly have the right to vote, and they could be said to participate in public affairs through the advice they gave in the performance of their duties. However, there were countries where they were

not permitted to involve themselves in political activities, and those countries should not be placed in breach of article 25 by the wording of the general comment.

6. Mr. BUERGENTHAL suggested that the following reformulation of the phrase might overcome some of the concerns raised: "In their internal management, political parties should respect the applicable principles of article 25 in order to enable citizens to exercise their rights thereunder."

7. Mr. BÁN said that he tended to favour Mr. Kretzmer's proposal, because the other formula incorrectly placed the responsibility on political parties, which had no obligations as such under article 2. Furthermore, such a wording could be taken by States as a justification for interference in the internal affairs of political parties.

8. Mr. KRETZMER said he fully agreed with the point made by Mr. Bán.

9. Ms. EVATT said that she favoured Mr. Kretzmer's formula, as revised. It was essential to ensure that political parties did not frustrate the objectives of article 25 in the management of their affairs. His formula put the responsibility for doing so on States, and instructed them to ensure the implementation of the rights protected under article 25, but only "where necessary". That had been precisely the intent of the original draft.

10. Mr. KLEIN said that although he accepted Mr. Bán's position that the responsibility should lie not with political parties but with States, he was troubled by Mr. Kretzmer's proposal, because by that formulation such steps were necessarily taken after the fact, when the problem had already arisen.

11. Mr. BHAGWATI said he agreed with Mr. Kretzmer's formula, as revised.

12. The CHAIRMAN, speaking in his personal capacity, said that he favoured Mr. Buergenthal's most recent formula. He shared the concern, expressed by Mr. Klein, that the phrase "where necessary" indicated that there was no need to take measures until the terms of the Covenant had in fact already been violated.

13. Mr. FRANCIS said that there was nothing revolutionary about referring to the internal management of political parties in the present context. It was already the responsibility of the State concerned, if political parties failed to conform to the expectations of article 25, to introduce legislation requiring them to do so. He therefore favoured Mr. Buergenthal's formula.

14. Mr. BUERGENTHAL suggested that it might be possible to reach agreement if the phrase was reformulated as follows: "States parties should ensure that, in their internal management, political parties respect the applicable principles of article 25." If members so wished, the phrase could go on to read, "in order to enable citizens to exercise their rights thereunder".

15. Mr. KRETZMER said that he would not object to Mr. Buergenthal's proposal, which was not, in fact, very different from the draft under discussion.

16. Mr. BHAGWATI supported Mr. Buergenthal's proposal.

17. Paragraph 24, as amended, was adopted.

Paragraph 25

18. Ms. EVATT said that paragraph 25, dealing with the principle set forth in article 5, stipulated that the democratic and political rights guaranteed under article 25 of the Covenant should not be used to destroy or limit those rights or other rights. By way of example, it cited campaigning for election on a platform which advocated the eventual abolition of the right to campaign for election.

19. Mr. BRUNI CELLI suggested that the sense of the final clause should be broadened by the inclusion of the words "or diminution," after the word "destruction".

20. Mr. BUERGENTHAL said that the clause which followed the words "for example" was unacceptable, because it constituted a violation of the right to freedom of expression.

21. Mr. ANDO agreed.

22. The CHAIRMAN, speaking in his personal capacity, shared the concern voiced by the previous two speakers.

23. Mr. EL SHAFEI said that paragraph 25 was precise in its meaning and simply applied the terms of article 5 to the discussion at hand. He doubted that the members of the Committee would object to the protection of the rights guaranteed under article 25; why, therefore, would they oppose banning a campaign that advocated the destruction of those rights?

24. Mr. BUERGENTHAL maintained that, as formulated, the paragraph would prevent anyone from arguing against the protection of the rights guaranteed under article 25, and therefore was utterly inconsistent with the terms of the Covenant. Taking action to deny those rights was one thing, but simply arguing against them was another. Article 5 should not be introduced in that context in an effort to restrict freedom of expression in political campaigns. People had to be free to object; that was the key principle of the right to freedom of expression.

25. Mr. FRANCIS suggested that the insertion proposed by Mr. Bruni Celli should be reordered. The phrase should instead read: "a programme which includes the diminution or abolition or destruction".

26. Lord COLVILLE said that he was disturbed by the position taken by Mr. Buergenthal. The Covenant was binding on States parties, and article 5 was an interpretive provision addressed to States, groups and persons. Article 5, paragraph 2, stipulated that there should be no restriction on or derogation from any of the human rights recognized or existing in any State party. Paragraph 24 gave States the responsibility for ensuring that political parties should conform to the terms of article 25; he feared that if article 5 were not invoked in paragraph 25, the general comment would be

undermining their responsibility to ensure that political parties did not use political platforms to advocate the destruction of the rights guaranteed by the Covenant, including those protected under article 25. In fact, merely to advocate absolute freedom of expression was incompatible with the Covenant, which had certain built-in limitations. Those limitations should, in his view, be expressed in the general comment.

27. Mr. KRETZMER said that although he appreciated Mr. Buergenthal's concern, it did not seem relevant in the context. The paragraph did not require all States to limit the right to freedom of expression in that manner. It simply allowed a State to limit such campaigns if it so chose.

28. He would, however, agree to deleting the example. But if it were to be retained, the word "claiming" should be deleted and the word "includes" should be replaced by the word "advocates".

29. Mr. KLEIN agreed that if no mention was made of article 5, the general comment would not provide a full discussion of the rights protected by article 25. He therefore favoured the retention of the paragraph, as revised by Mr. Kretzmer.

30. Mr. PRADO VALLEJO contended that since many examples of the use of the right to freedom of expression to limit the rights protected under the Covenant could be cited, it was perhaps misleading to name only one example. It was worth noting that article 20 explicitly addressed the matter at hand, in that it constituted a restriction on the right to freedom of expression when the use of that right incited to national, racial or religious hatred. The Committee had inquired of several States parties why they failed to restrict propaganda that advocated certain types of hatred. Those States parties had invariably replied that such a restriction constituted a limitation on the right to freedom of expression. And yet, under article 20, limitations must be placed on the expression of views advocating, for example, ethnic cleansing or genocide. He agreed that the example given in paragraph 25 should be deleted, but not because it constituted an improper limitation on the right to freedom of expression.

31. Mr. BRUNI CELLI said that history provided innumerable examples of those who had used the right to freedom of expression to abolish other rights, among them the Nazi party in Germany, which advocated the destruction of rights later enshrined in the Covenant. He had reconsidered his position and now felt that the paragraph, as revised, provided ample protection against the use of electoral platforms to advocate the destruction of rights.

32. Mr. LALLAH underscored the relevance of the freedom of expression - and of the manner in which it was interpreted in different States - to the Committee's present deliberations on article 25 of the Covenant. He added that to decide whether or not the platform of a given political party was destructive of the rights and freedoms protected by the Covenant might involve value judgements. On the whole, he believed that it should be left to the wisdom and responsibility of States to appreciate the broad wording of the first part of paragraph 25 and that the example offered in the draft should be deleted.

33. Mr. BÁN said that he appreciated Mr. Buergenthal's concerns, but nevertheless favoured retention of the example. Pointing out that in essence, the paragraph under discussion reiterated article 5 (1) of the Covenant, he suggested that it might, without any loss of the intended impact, start from the words "any rights ...", especially as the preceding phrase could give rise to problems of interpretation.

34. Ms. MEDINA QUIROGA said that she was in favour of deleting the example in paragraph 25.

35. Mr. BHAGWATI said that he generally shared the views expressed by Mr. Bán, but would not object to the deletion of the example if it risked creating the wrong impression.

36. Mr. POCAR remarked that the Committee had yet to express its views on article 5 of the Covenant in the form of a general comment; nothing should be done that might prejudice its ultimate position in that regard. The question of limitations on rights was a complex one, and the Committee should tread carefully. To his mind, paragraph 25 should contain no examples. Its direct relation to article 5 (1) of the Covenant should be made clear by stating that at all events, there must not be limitation to a greater extent than was provided for in that instrument.

37. The CHAIRMAN noted an emerging consensus in favour of deleting the proposed example.

38. Speaking personally, he pointed out that a great many debates were under way throughout the world that could result in great harm to the rights protected by the Covenant; the Western democracies were in no way immune to that trend, and he gave several examples.

39. Mr. KRETZMER, speaking on behalf of Mr. LALLAH, suggested that the first part of the paragraph might read "The free expression of the will of the electors or any rights recognized and protected by article 25 may not be interpreted, having regard to the provisions of article 5 (1), as implying ..."; and that the example should be deleted.

40. Mr. KLEIN said that he would prefer the paragraph to begin: "According to article 5, any rights recognized ..."; should be deleted.

41. Ms. EVATT proposed the revision of the opening words to read "Having regard to article 5, any rights recognized ..." and the addition, after the words "protected by the Covenant", of "to a greater extent than is provided for in the present Covenant".

42. She considered it regrettable that it had not proved possible to express the idea that democratic rights must not be used to destroy democratic rights and that in particular the rights established under article 25 must not be used to destroy themselves.

43. The CHAIRMAN said he took it that there was a consensus in the Committee on the formulation just put forward.

44. Mr. BUERGENTHAL asked whether it would not be possible in the future, for the sake of easy reference, to reproduce the texts of the relevant articles of the Convention alongside the Committee's general comments.

45. The CHAIRMAN said that the Committee would no doubt wish to place on record its appreciation to Ms. Evatt, as well as to her predecessor Mr. Myullerson for the great amount of effort they had expended in the preparation of the initial drafts of the general comment.

46. Ms. EVATT thanked her colleagues for the patience they had shown.

The meeting rose at 11.10 a.m.